

PUBLIC ADVOCATES OFFICE

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



June 22, 2021

Honorable Jim Patterson
California State Assembly
State Capitol, Room 3132
Sacramento, CA 95814

Re: AB 1257 (Patterson) – Oppose

Dear Assemblymember Patterson:

The Public Advocates Office is the independent consumer advocate at the California Public Utilities Commission (CPUC). Our mission is to advocate for the lowest possible rates for customers of California's investor-owned utilities consistent with safe, reliable service levels and the state's environmental goals.

We recognize that California's small independent telephone corporations play an important role in providing access to telecommunications services for residents in rural and hard to reach areas of the state, and your bill's intent to increase the efficiency of the CPUC's ratemaking processes for these companies. Unfortunately, your bill, as introduced on February 19, 2021, will likely have the unintended consequences of either increasing the burden on small independent telephone corporations or undermining the review of their General Rate Case (GRC) applications.

Specifically, we oppose the provision that would require parties involved in a small independent telephone corporation GRC application proceeding to participate in mediation with a neutral administrative law judge. It should be left to the litigating parties to decide, on a case-by-case basis, whether mediation can help advance agreement. In the last 10 years, we participated in 9 such GRCs. Of these 9 proceedings, 6 resulted in settlement agreements adopted by the CPUC.¹ These numbers clearly suggest that forced mediation is unnecessary. Moreover, the CPUC recently revised its Rules of Practice and Procedure to require parties to meet and confer following the submission of rebuttal testimony in order to identify and resolve any anticipated motions, and to determine if settlement is possible.² Rule 13.9 will further

¹ The small independent telephone company and the Public Advocates Office reached a settlement agreement in 7 of these 9 GRCs. However, the CPUC rejected one of the settlement agreements.

² Rule 13.9. Either the assigned Commissioner or the assigned Administrative Law Judge can modify the meet and confer requirement. The CPUC published the new Rules of Practice and Procedure May 1, 2021.

encourage parties to settle or at least narrow the scope of disputed issues, without the requirement that the parties formally engage a mediator.

We oppose the provision that would require parties to meet and confer before filing any motion in a small independent telephone corporation's GRC. Requiring parties to "meet and confer" before filing *any* motion is impractical, would lead to greater legal expenses, and contribute to unnecessary delays. As shown in Attachment 1, the CPUC's Rules of Practice and Procedure already require parties to meet and confer before filing motions to compel (Rule 11.3) and to make a good faith effort to ask parties to agree before moving for an extension (Rule 11.6), but do not impose such a requirement in the many instances where it would serve no useful purpose.³ In the 9 small independent telephone company GRC application proceedings in which we participated over the past 10 years, the small independent telephone companies filed about 61% of the motions, we filed about 31% of the motions, while the remaining 9% were filed jointly by both parties. About 27% of those motions went through a "meet and confer" process.⁴

A mandatory "meet and confer" for other types of motions is a poor use of resources that may make it harder to meet proceeding deadlines. For example, a motion to strike portions of another party's testimony would rarely benefit from a prior "meet and confer" as reaching agreement is highly unlikely. The same goes for a motion for reconsideration of an administrative law judge's ruling. Other examples of motions where prior "meet and confer" requirements would require parties to expend time and resources, yet serve no useful purpose, include motions to file materials under seal, and motions for leave to serve confidential testimony or file confidential comments.

We oppose the provision that would authorize a small independent telephone company to file its GRC via an advice letter (instead of an application). 10 of the 13 independent small telephone companies voluntarily participate in the California High-Cost Fund – A (CHCF-A, Public Utilities Code Section 275) program, which provides subsidies to these companies because they serve high-cost areas. On average, these 10 companies receive a total annual subsidy of \$1,137 per customer (\$760 from CHCF-A and \$377 from the Federal High-Cost Loop Support fund). Funding for the CHCF-A subsidy program is provided by all California communications customers through a surcharge. Under Public Utilities Code Section 275.6 (c) (3) and (c) (4), the CPUC has the duty to ensure subsidies are not excessive and that rates charged to customers of companies receiving these subsidies are reasonably comparable to rates charged to customers of urban telephone corporations. An advice letter process for small independent telephone company GRCs would not allow sufficient time to evaluate the issues that impact not just the customers of the small independent telephone company, but the other California communications customers who fund the CHCF-A through a surcharge on their rates.

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³ As explained above, Rule 13.9 would require parties to identify and attempted to resolve any anticipated motions following the submittal of rebuttal testimony.

⁴ This includes the joint motions and motions filed under Rule 11.3 and Rule 11.6

Finally, it is important to note that the CPUC currently has an open rulemaking (R.11-11-007) to determine what changes to the CHCF-A program are necessary. Among other things, this rulemaking will decide whether small independent telephone companies should have the option to file their GRCs via the advice letter process and, if so, under what conditions.

Until this rulemaking is completed, changes to the statute governing the CHCF-A program are premature.

Thank you for considering our concerns. If you have any questions or would like to discuss this matter further, please contact me at 415-703-5256 or at amy.yip-kikugawa@cpuc.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Amy Yip-Kikugawa".

Amy Yip-Kikugawa
Acting Director
Public Advocates Office

Attachment

Attachment 1

CPUC Rules of Practice and Procedure, May, 2021
California Code of Regulations, Title 20, Division 1, Chapter 1

<https://docs.cpuc.ca.gov/SearchRes.aspx?docformat=ALL&docid=381267826>

Rules Related to Motions

Rule No.	Subject	Meet & Confer Required?
Rule 9.2	Motion for Reassignment on Peremptory Challenge	No
Rule 9.3	Motion for Reassignment for Prior Service	No
Rule 9.4	Motion for Disqualification of Administrative Law Judge for Cause	No
Rule 9.5	Motion for Disqualification of Commissioner for Cause	No
Rule 11.1	Motions (Generally) ⁵	No
Rule 11.2	Motion to Dismiss	No
Rule 11.3	Motion to Compel and Limit Discovery	Yes, meet and confer in good faith effort to informally resolve dispute
Rule 11.4	Motion for Leave to File Under Seal	No
Rule 11.5	Motion to Seal the Evidentiary Record	No
Rule 11.6	Motion for Extension of Time	Yes, requestor in good faith must ask affected parties to agree on an extension and must report the results in its motion
Rule 12.1	Proposal of Settlements	Yes, in effect, because this is a joint filing
Rule 13.8	Prepared Testimony	No
Rule 13.10	Motion for Official Notice of Facts	No
Rule 13.14	Oral Argument	No

⁵ Motions in CHCF-A General Rate Case Applications filed under Rule 11.1 include, for example: Motion for Interim Rate Relief, Motion to Supplement Evidentiary Record, Motion to Strike, Motion to Make Public Confidential Brief and Exhibits, Motion to Shorten Response Time to Motion, Motion for an Extension of Stay, Motion to File Under Seal, Motion for Ruling to Require Disclosure, Joint Motion to Adopt Settlement Agreement, Motion to Accept Late Filed Protest, Motion to Extend Sealing Period of Certain Material Currently Under Seal, Motion for Reconsideration of an Administrative Law Judge or Assigned Commissioner Ruling, Motion to Clarify Ruling, Motion to Modify Procedural Schedule, Motion to Compel Compliance, Motion to Exclude from Record Certain Filings or Materials, Motion to Accept Exhibits into Evidentiary Record, Motion to Modify Administrative Law Judge Ruling, Motion, Motion to Correct Portions of Evidentiary Hearing Transcript, Motion to Unseal Portion of Evidentiary Hearing Transcript.